

87-2023

No. 87-

Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

THOMAS LEE CHRISTIANSEN AND
BETTY LORRAINE CHRISTIANSEN,
Petitioners,
v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the Commissioner of Internal Revenue incorrectly applied Section 170 of the Internal Revenue Code of 1954 in reversing seven decades of prior IRS interpretations and disallowing charitable contribution deductions for payments made by individual Scientologists solely to participate in religious services of their faith.

2. Whether denying charitable contribution deductions under Section 170 for payments by Scientologists to participate in their faith's core religious sacraments violates the religion clauses of the First Amendment.

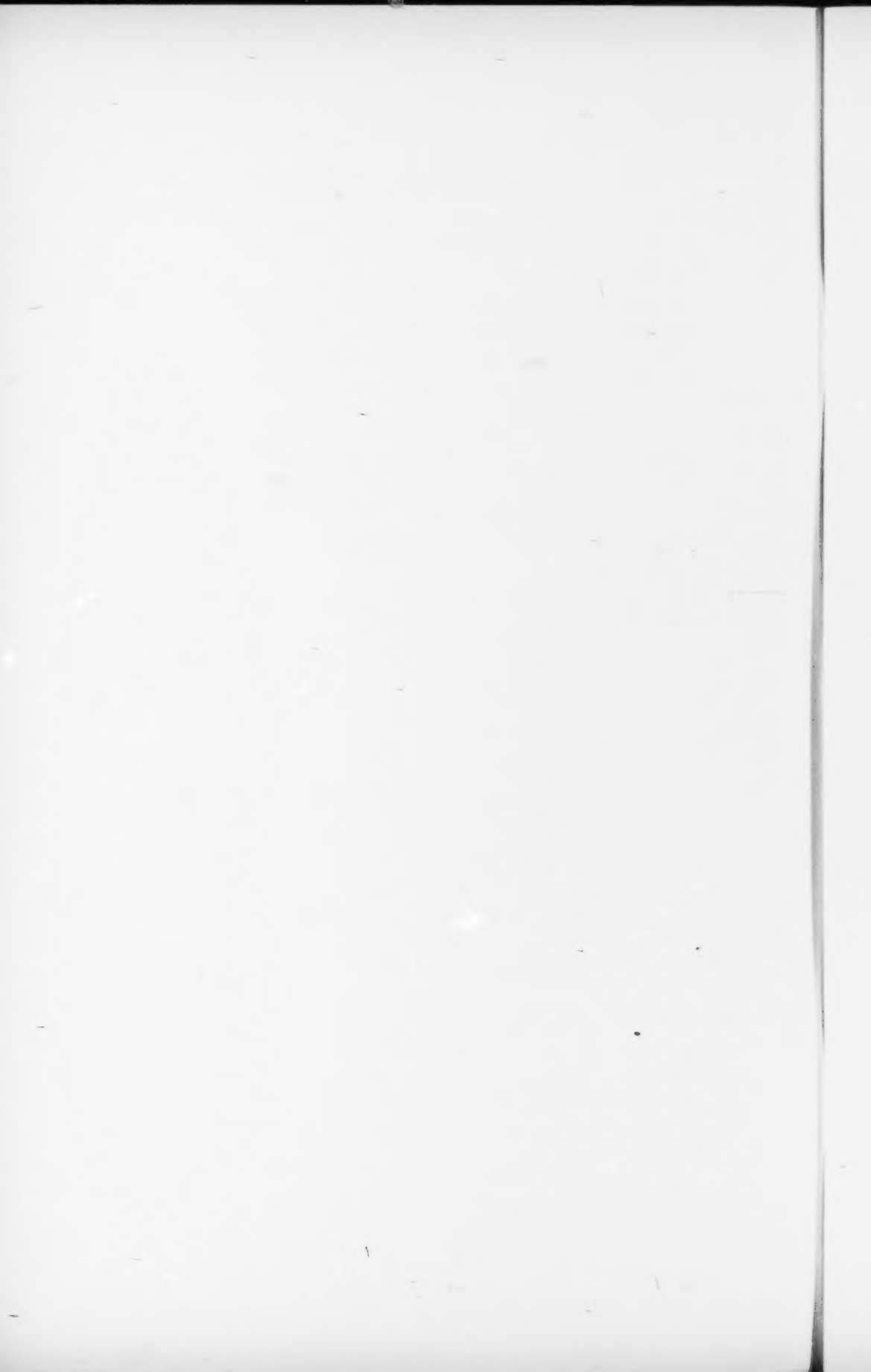


TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVI- SIONS INVOLVED	2
STATEMENT OF THE CASE	2
The Nature of the Proceedings	2
Statement of Facts	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	8
APPENDIX A	
Court of Appeals Opinion, <i>Christiansen v. Com- missioner</i>	1a
APPENDIX B	
Court of Appeals Judgment, <i>Christiansen v. Com- missioner</i>	8a
APPENDIX C	
Tax Court Stipulation #1, <i>Graham v. Commis- sioner</i>	9a
APPENDIX D	
Tax Court Stipulation, <i>Christiansen v. Com- missioner</i>	20a

TABLE OF CONTENTS—Continued

APPENDIX E	Page
Tax Court Order and Decision, <i>Christiansen v. Commissioner</i>	22a
APPENDIX F	
Tax Court Opinion, <i>Graham v. Commissioner</i>	23a
APPENDIX G	
A.R.M. 2, 1 C.B. 150 (1919)	34a
APPENDIX H	
Constitutional and Statutory Provisions Involved..	35a

TABLE OF AUTHORITIES

Cases:	Page
<i>Christiansen v. Commissioner</i> , 843 F.2d 418	3, 7
<i>Foley v. Commissioner</i> , 844 F.2d 94 (2d Cir. 1988) ..	3, 4, 7
<i>Graham v. Commissioner</i> , 83 T.C. 575 (1984), <i>aff'd</i> , 822 F.2d 844 (9th Cir. 1987), <i>cert. granted</i> , No. 87-1616 (May 23, 1988)	2, 3, 4, 6
<i>Graham v. Commissioner</i> , 822 F.2d 844 (9th Cir. 1987), <i>aff'g</i> 83 T.C. 575 (1984)	2, 4, 7, 8
<i>Hernandez v. Commissioner</i> , 819 F.2d 1212 (1st Cir. 1987), <i>cert. granted</i> , No. 87-963 (April 18, 1988)	3, 4, 7, 8
<i>Miller v. Internal Revenue Service</i> , 829 F.2d 500 (4th Cir. 1987), <i>petition for cert. filed</i> , No. 87- 1449 (March 1, 1988)	3, 4
<i>Staples v. Commissioner</i> , 821 F.2d 1324 (8th Cir. 1987), <i>petition for cert. filed</i> , No. 87-1382 (Feb. 19, 1988)	3, 4, 7

Statutes:

Internal Revenue Code of 1954 (26 U.S.C.)

§ 170	(i), 2, 4, 6
§ 170(b) (1) (A) (i)	4
§ 501	2, 4
§ 7482(a)	2
28 U.S.C. § 1254(1)	2

United States Constitution:

Amendment I	(i), 7
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

No. 87—

THOMAS LEE CHRISTIANSEN AND
BETTY LORRAINE CHRISTIANSEN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

Petitioners Thomas Lee and Betty Lorraine Christiansen pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above-entitled matter on April 1, 1988.

OPINIONS BELOW

The opinion of the court of appeals in this matter is reported at 843 F.2d 418 and is reprinted in the Appendix to this petition (1a).¹ The Judgment of the Court

¹ References in this petition are indicated as follows:

To the numbered pages of the Appendix to this petition:
(—a).

To the volume number and numbered pages of a four volume Stipulated Record on Appeal filed in the court below: (Stip. Req. —, —).

To the numbered pages of the Addendum to petitioners' main brief in the court below: (Add. —).

of Appeals is also reprinted (8a). The opinion of the United States Tax Court in the case designated by the parties as providing the binding factual and legal findings in this case is reported as *Graham v. Commissioner*, 83 T.C. 575 (1984) and is reprinted in the Appendix (23a). The Order and Decision the Tax Court in petitioners' case is also reprinted in the Appendix (22a).

JURISDICTION

The opinion and judgment of the court of appeals (for which jurisdiction was invoked under 26 U.S.C. § 7482 (a)) was entered on April 1, 1988.

The jurisdiction of this Court to review the judgment of the Tenth Circuit is invoked in accordance with 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The religion clauses of the First Amendment to the United States Constitution and pertinent portions of 26 U.S.C. § 170 and 26 U.S.C. § 501 are set forth in the Appendix to this petition (35a).

STATEMENT OF THE CASE

The Nature of the Proceedings

Petitioners Thomas Lee Christiansen and Betty Lorraine Christiansen were denied income tax deductions for contributions made to their church, the Church of Scientology, and were assessed tax deficiencies in the amounts of \$177.04, \$913.57 and \$306.00 for the tax years 1975, 1976 and 1977, respectively (Add. 4, 5).

Along with hundreds of similarly situated Tax Court petitioners who had contributed sums of money to various churches and missions of the same religious denomination, petitioners waived trial and, subject to their right of appeal, agreed to be bound by the outcome of similar "test"

cases. The Commissioner of Internal Revenue (the "Commissioner") and the petitioners stipulated in the Tax Court that such designated cases were typical and that, to the extent relevant, the record of those cases was to be incorporated into the record of all proceedings in petitioners' case (20-21a).

This case has arisen in a somewhat unique procedural posture. As indicated, both sides below agreed to be bound, subject to the right of appeal, by the relevant factual and legal findings (excluding those relating to "subjective intent") of the Tax Court in a designated case, *Graham v. Commissioner*, 83 T.C. 575 (1984). The Tax Court ruled in favor of the Commissioner in *Graham*, and on the authority of that decision entered its judgment in favor of the Commissioner in petitioners' Tax Court case. (22a). Petitioners then filed a timely notice of appeal from the Tax Court's decision and appealed to the United States Court of Appeals for the Tenth Circuit which, by a 2-1 vote, affirmed the decision of the Tax Court. *Christiansen v. Commissioner of Internal Revenue*, 843 F.2d 418 (1a).

Appeals similar to petitioners' have been decided by or are pending in all other United States Courts of Appeals except the appellate courts for the District of Columbia and the Federal Circuits.

Five other courts of appeals have issued opinions in appeals based on records identical to that of the instant case and raising similar legal issues. Like the Tenth Circuit in this case, panels of the First, Fourth and Ninth Circuits affirmed the Tax Court's decision. *Hernandez v. Commissioner*, 819 F.2d 1212 (1st Cir. 1987), *Graham v. Commissioner*, 822 F.2d 844 (9th Cir. 1987) and *Miller v. Internal Revenue Service*, 829 F.2d 500 (4th Cir. 1987). The Eighth and Second Circuits, however, reversed the Tax Court, holding that similar payments were properly deductible. *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987) and *Foley v. Commissioner*, 844

F.2d 94 (2d Cir. 1988). The government unsuccessfully sought rehearing in the Eighth Circuit in *Staples* and filed a petition for certiorari in this Court. No. 87-1382 filed February 19, 1988. Counsel for the government has advised that the government will file a certiorari petition in the *Foley* case.

In *Hernandez*, the taxpayer, represented by the undersigned, filed his petition for a writ of certiorari in this Court on December 11, 1987 (No. 87-963). Similarly, in *Miller* and in *Graham*, the taxpayers, also represented by the undersigned, filed petitions for certiorari. No. 87-1449, filed March 1, 1988 and No. 87-1616, filed March 30, 1988.

By order entered on April 18, 1988, this Court granted the petition for certiorari filed in *Hernandez v. Commissioner*. Thereafter, in its memorandum in response to the certiorari petition filed in *Miller*, the government urged this Court to "hold [the] case pending the disposition of *Hernandez*." Memorandum For The Respondent in No. 87-1449 at 4. By order entered May 23, 1988, this Court granted the petition for certiorari filed in *Graham v. Commissioner* and ordered that case to be consolidated with the *Hernandez* case.

Statement of Facts

The parties have stipulated that Scientology, the faith whose sacraments are at issue here, is a religion (18a, ¶ 52) and that the recipients of the contributions, the relevant Scientology missions and churches, were, at all relevant times, churches within the meaning of Internal Revenue Code § 170(b)(1)(A)(i) and tax-exempt religious organizations under § 501 of the Code eligible to receive contributions deductible under § 170. (18-19a, ¶ 53).²

² The parties' stipulations in *Graham v. Commissioner*, incorporated by reference in the proceedings below, are reprinted in the Appendix to this petition (9a).

The payments at issue in this case are made for the core religious practice of the Church of Scientology known as "Auditing." Specifically, the record, through the detailed stipulations of fact, established that parishioners of Scientology are taught that "the individual is an immortal spirit who has a mind and a body" and "that the highest level of spiritual ability and awareness can be obtained only by progressing on a step-by-step basis through lower and intermediate levels of Auditing." (11a, ¶ 16). "Every Auditing session is structured and conducted in exact accordance with rituals, codes, doctrines and tenets of Scientology" (11a, ¶ 15). No subject matter is taught, studied or learned during auditing. (12a, ¶ 23). Dr. Thomas Love, a professor of religious studies at California State University at Northridge, California, gave his uncontradicted expert opinion that "auditing," the service for which the bulk of contributions involved were made, is "the essential religious experience of the Church of Scientology." (Stip. Rec. III, 390-396).

The Church of Scientology engages in another religious practice also at issue here known to Scientologists as "training." In training parishioners study "the doctrines, tenets, codes, policies and practices of Scientology" (12a, ¶ 24), and study the scriptures of Scientology to the exclusion of all other materials. (Stip. Rec. II 206, 219, 225-26, 229). As part of training, a person may audit others. (Stip. Rec. I 19-20, 112, 140; II 219, 222). The purpose of undergoing training is to achieve religious enlightenment and the ability to help others (including the ability to audit another person). Dr. Love gave uncontradicted expert testimony that "training" is a form of religious observance, comparable to devotional study of sacred texts in the Buddhist and Judaic traditions (Stip. Rec. III 300-404). Scientologists believe that the spiritual benefits and awareness derived from auditing and training accrue not only to the individual but also extend to

the public at large. (Stip. Rec. II 213-14, 223, 238, 160-61, 274-75, 298).

In accordance with those stipulations and testimony, the Tax Court found the practices at issue to be religious. *Graham v. Commissioner*, 83 T.C. at 580 (29a, 30a) (“[P]etitioners wanted to receive the benefit of various religious services provided by the Church of Scientology”).

The Churches of Scientology have established charges for auditing and training and refer to the payments of such charges as “fixed donations” or “fixed contributions.” (14a, ¶ 36). Such fixed donations are the payments at issue here. (15a, ¶ 40). These donations, which are based upon a religious tenet of Scientology called the Doctrine of Exchange, constitute the source of most of the funds of the Churches of Scientology and are used to pay the costs of church operations and activities. (14a-15a, ¶ 39). Amounts of fixed donations have been set historically at levels that correspond roughly to a percentage of the income of church members. For example, the Tax Court below found that 25 hours of auditing has historically been set at the equivalent of three months’ pay for average middle class church members. *Graham*, 83 T.C. at 578, n.7 (26a). None of the taxpayers in the designated cases tried below nor the petitioners here received any material goods or secular services with respect to the payments at issue.

The government’s position in this case is that payments by individuals to participate in the religious sacraments of their church may be disallowed depending on the form of such payment and the nature and value of the religious service provided. The Tax Court agreed and the Tenth Circuit affirmed.

The court of appeals held that payments to a church may not be deducted under § 170 of the Internal Revenue Code when such payments are made to receive religious

services. The court, expressly adopting the reasoning of the Ninth Circuit in *Graham*, concluded that participation in the religious sacraments of their Church constituted a “‘specific, measurable quid pro quo’” to the petitioners in return for their payments requiring disallowance of their deductions. 843 F.2d 418, 420 *quoting Graham*, 822 F.2d at 849 (5a). Although the court acknowledged that IRS valuation of religious services created “practical and constitutional difficulties” and could cause excessive entanglement in violation of the Establishment Clause, the court held that valuation of the religious services at issue here was permissible. *Id.* at 420 (5a). The panel below further held, by reference to the *Hernandez* and *Graham* opinions, that its construction of the statute did not violate the First Amendment rights of the taxpayers under the Free Exercise or Establishment Clauses. Judge Seymour in dissent indicated her “full agreement” with the contrary result and analysis of the Eighth Circuit in *Staples v. Commissioner*. She also expressed her view that the decisions in favor of the government have “ominous implications for all religious institutions.” *Id.* at 421 (7a).

REASONS FOR GRANTING THE WRIT

1. The decision of the court below conflicts directly with the decision of the Eighth Circuit in *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987), *petition for cert. filed*, February 19, 1988 (No. 87-1382), and the decision of the Second Circuit in *Foley v. Commissioner*, 844 F.2d 94 (2d Cir. 1988). Indeed, it is difficult to imagine a squarer conflict since the decisions of the Tenth Circuit below and those of the Eighth Circuit in *Staples* and the Second Circuit in *Foley* reviewed the same Tax Court opinion and were based on the same trial record.

2. The questions presented for review in this case are identical to those presented by the related cases in which certiorari was granted on April 18, 1988, *Hernandez v.*

Commissioner, and on May 23, 1988, *Graham v. Commissioner*. Accordingly, it would be appropriate for the Court to hold this case pending the deposition of the consolidated *Hernandez* and *Graham* cases.

CONCLUSION

This petition for a writ of certiorari should be disposed of as appropriate in light of this Court's decision on the merits in *Hernandez v. Commissioner*, No. 87-963 and *Graham v. Commissioner*, No. 87-1616.

Respectfully submitted,

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June, 1988

APPENDICES



APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 86-1453

THOMAS LEE and BETTY LORRAINE CHRISTIANSEN,
Appellants,
v.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

Filed April 1, 1988

Appeal from the United States Tax Court
(Tax Court No. 7111-79)

Michael J. Graetz (Eric M. Lieberman and Nicholas E. Poser, of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., of New York, New York, on the briefs), of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C., of New York, New York, for the appellants.

David M. Moore (Michael L. Paup and Robert S. Pomerance, Attorneys of the Tax Division, Department of Justice, and Roger M. Olsen, Assistant Attorney General, with him on the brief), Attorney of the Tax Division, Department of Justice, for the appellee.

Lee Boothby, Attorney for Americans United for Separation of Church and State, amicus curiae.

Before SEYMOUR, McWILLIAMS, and TACHA, Circuit Judges.

TACHA, Circuit Judge.

Thomas and Betty Christiansen appeal a final order of the United States Tax Court finding deficiencies in their income taxes for the taxable years 1975, 1976, and 1977 in the amounts of \$171.04, \$913.57, and \$306.00, respectively.

This case is one of a number of virtually identical cases. The Christiansens, who reside within the Tenth Circuit, and taxpayers who reside in other circuits, claimed deductions under section 170¹ for charitable contributions to the Church of Scientology (Church). The Internal Revenue Service (IRS) denied these deductions, Rev. Rul. 78-189, 1978-1 C.B. 68, because the taxpayers had not established that the payments exceeded the value of benefits and privileges received in return. The Christiansens and other taxpayers challenged the IRS position. They stipulated, along with the IRS, that they would be bound by a United States Tax Court test case, although they reserved their right to appeal the decision. The tax court decided adversely to the Ninth Circuit taxpayers in *Graham v. Commissioner*, 83 T.C. 575 (1984), *aff'd*, 822 F.2d 844 (9th Cir. 1987). The Christiansens now appeal to this court. Appeals based on an identical record are now pending or have been decided in every circuit except the Federal Circuit, *Miller v. I.R.S.*, 829 F.2d 500 (4th Cir. 1987); *Graham v. I.R.S.*, 822 F.2d 844 (9th Cir. 1987); *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987), *petition for cert. filed*, Feb. 19, 1988; *Hernandez v. Commissioner*, 819 F.2d 1212 (1st Cir. 1987), *petition for cert. filed*, Dec. 11, 1987.

The payments for which the Christiansens claim deductions are payments made to the Church for auditing and training services. Auditing and training are the two central religious services of Scientology. In the tax court test case, the parties stipulated that: (1) Scientology is

¹ All section references are to the Internal Revenue Code of 1954 as amended and in effect during the taxable year in question.

a religion, (2) Scientology organizations are churches within the meaning of section 170(b)(1)(A)(i), and (3) Scientology is a tax-exempt organization under section 501(c)(3).² The IRS also conceded that auditing is a form of religious observance. Thus, the issue before the tax court was whether the taxpayers' payments for auditing and training services are charitable contributions or gifts within the meaning of section 170.

The tax court noted that a charitable contribution has been defined as a voluntary transfer of property without consideration. *Graham*, 83 T.C. 575, 580 (1984) (quoting *DeJong v. Commissioner*, 36 T.C. 896, 899 (1961), *aff'd*, 309 F.2d 373 (9th Cir. 1962)). The court also noted that if a payor makes a payment in anticipation of receiving a benefit, the payment is not a gift. *Id.*

In assessing whether the payments at issue qualify as charitable contributions, the tax court examined the structure of the taxpayers' payments to the Church for auditing and training sessions. The court found that the Church provided auditing and training services only if they were purchased, and gave discounts for advance payment and refunds if a person decided not to receive the services. *Id.* The court concluded that the payments were not "voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return," *id.* at 581, and therefore, the claimed deductions were not allowed. The tax court also rejected taxpayers' constitutional challenges to denial of the deductions. *Id.* at 581-83.

On appeal, we review the legal standards applied by the tax court and its factual conclusions based on those standards. We find no error and thus are in agreement

² The parties also stipulated to the entire record in a related case, *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984), *aff'd*, 823 F.2d 1310 (9th Cir. 1987), *petition for cert. filed*, Feb. 16, 1988.

with the decisions of the First, Fourth, and Ninth Circuits affirming the tax court's denial of the deductions. *Miller*, 829 F.2d at 501; *Graham*, 822 F.2d at 846; *Hernandez*, 819 F.2d at 1227. These decisions are thorough and well-reasoned, and we find them persuasive.

We turn first to the appropriate legal standard. The United States Supreme Court held that "[t]he *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration." *United States v. American Bar Endowment*, 106 S. Ct. 2426, 2434 (1986). If a taxpayer expects a substantial benefit in return for his payment, then the payment is not deductible. *Id.* at 2433. In *Graham*, the court stated that the rule in the Ninth Circuit further provides that "a charitable gift or contribution must be a payment made for detached and disinterested motives. This formulation is designed to ensure that the payor's primary purpose is to assist the charity and not to secure some benefit personal to the payor." *Graham*, 822 F.2d at 848. This rule, which comports with the Supreme Court's opinion in *American Bar Endowment*, applies in the Tenth Circuit as well. *Dowell v. United States*, 553 F.2d 1233, 1238 (10th Cir. 1977). Thus, in deciding whether a payment is a charitable gift or contribution, we examine the payor's intent.

To determine the payor's intent, we look to the circumstances of the transaction. *Commissioner v. Duberstein*, 363 U.S. 278, 287-89 (1960); *Miller*, 829 F.2d at 503; *Graham*, 822 F.2d at 848-49; *Dowell*, 553 F.2d at 1238-39. "Thus focus on the external features of the transaction serves as an expedient for any more intensive inquiry into the motives of the payor." *Graham*, 822 F.2d at 848.

Taxpayers contend that the above rule does not apply in this case because they received a religious rather than an economic benefit. However, section 170 authorizes de-

duction of *contributions* only. The relevant question is whether the taxpayer expected a benefit in return for the payment; deductibility does not depend on what type of benefit the taxpayer received. A benefit does not have to be economic to bar the deduction. *Miller*, 829 F.2d at 503-04; *Graham*, 822 F.2d at 849; *Hernandez*, 819 F.2d at 1217. *But see, Staples*, 821 F.2d at 1326-27.

The test is not the economic character of what the payor receives but whether there is a specific, measurable quid pro quo for the donation in question. Though the economic aspect of a reward makes it easier to identify such a transaction, it is not a precondition to application of the test.

Graham, 822 F.2d at 849. Section 170 does not authorize churches to offer a deductible quid pro quo while other charitable organizations may not. *Id.*

We turn now to consideration of how the legal standard applies to the facts of this case. We agree with the First Circuit that application of the *American Bar Endowment* standard could create practical and constitutional difficulties in some cases. *Hernandez*, 819 F.2d at 1218. The court in *Hernandez* offered the following example:

[Suppose] the government monitored church records in an attempt to place a monetary value on the benefit of all church services, group programs, and pastoral counselling generally available to contributing members. Such a case would present not only the problem of determining value but also the problem of excessive entanglement in the affairs [of] a religious institution.

Id. The court found, however, that these problems were not present in the case before it. *Id.* Likewise, we find no practical or constitutional difficulties in applying the

appropriate legal standard to the facts of the case before us.

The Church requires payment of a fixed donation for auditing and training services: the Church sets the amount of these donations. It offers discounts if payments are made well in advance of services, and provides refunds for services not received. Taxpayers do not contest that their payments were for auditing and training services. They also do not claim that their donations exceeded the value of the services. Thus, examination of the structure of these payments clearly reveals that they were made on a quid pro quo basis for services. Furthermore, there is no problem in determining the value of the services since the value has been set by the Church and is not contested by the taxpayers.

Taxpayers also allege that the tax court's construction of section 170 violates the religion clauses of the first amendment and that selective enforcement by the IRS violates the first and fifth amendments. We agree with the analysis of the First and Ninth Circuits as to these issues, *Hernandez*, 819 F.2d at 1218-27; *Graham*, 822 F.2d at 850-53, and find no constitutional violation. See also *Miller*, 829 F.2d at 505-06.

AFFIRMED.

SEYMOUR, Circuit Judge, dissenting:

I respectfully dissent. I am in full agreement with the analysis of the Eighth Circuit in *Staples v. Commissioner*, 821 F.2d 1324 (8th Cir. 1987), and its conclusion that payments made by members of the Church of Scientology for individualized religious practices are tax deductible contributions. The court in *Staples* pointed out that

“‘our tax system does not treat religious services as commodities that are purchased in commercial transactions.’ Form sometimes is important in identifying a section 170 contribution because a payment appearing to be a purchase of an item of value creates a presumption that the transaction was not a donation. Rev. Rul. 67-246, 1967-2 C.B. 104, 105. Regardless of form, however, no similar presumption can arise when the item “purchased” was the right to participate in religious practice. Spiritual gain to an individual church member cannot be valued by any measure known in the secular realm. As the tax court has stated, privileges arising from church membership ‘are not significant return benefits that have a monetary value within the meaning of section 170.’ *Murphy v. Commissioner*, 54 T.C. 249, 253 (1970). The establishment by a church of a set “price” for religious participation does not change the nature of the benefit of religion to the individual or to society. If the Scientologist ‘prices’ were deemed to make participation in their religious services a material, financial, or economic benefit such that the Staples’ payments were not contributions, then ‘the passing of the collection plate in church would make the church service a commercial project.’ See *Murdock v. Pennsylvania*, 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87 L.Ed. 1292 (1943).”

In my view, any other conclusion has ominous implications for all religious institutions. I would reverse.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 86-1453

(T.C. Docket No. 7111-79)

THOMAS LEE CHRISTIANSEN and
BETTY LORRAINE CHRISTIANSEN,
vs. *Appellants,*

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

March Term—April 1, 1988

Before Honorable Stephanie K. Seymour,
Honorable Robert H. McWilliams and Honorable
Deanell R. Tacha, Circuit Judges

JUDGMENT

This cause came on to be heard on the record on appeal from the United States Tax Court, and was argued by counsel.

Upon consideration whereof, it is ordered that the judgment of that court is affirmed.

/s/ Robert L. Hoecker
ROBERT L. HOECKER
Clerk

APPENDIX C

UNITED STATES TAX COURT

Docket No. 5837-76

KATHERINE JEAN GRAHAM,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

[Filed Dec. 6, 1982]

STIPULATION #1

In accordance with Tax Court Rule 91, the parties hereby stipulate the matters hereinafter stated, subject to the rights of the parties to introduce other and further evidence not inconsistent herewith and reserving to each of the parties the right to object to the materiality or relevance hereof in whole or in part.

1. Petitioner maintained her legal residence at 743 Pumehana, Hawaii, at the time of the filing of the petition herein.

2. Petitioner filed a timely Federal Income Tax return for the taxable year ending December 31, 1972, a true and correct copy of which is attached hereto and marked as Joint Exhibit 1-A.

3. Petitioner's income tax return for said taxable year was examined by respondent, who, on April 7, 1976, is-

sued a notice of deficiency, a true and correct copy of which is attached hereto and marked as Joint Exhibit 2-B.

4. Petitioner claimed a charitable contribution deduction under I.R.C. § 170 for \$2,379.50 transferred to the Church of Scientology of Hawaii and to the Scientology and Dianetic Center of Hawaii.

5. Each of Exhibits C through Q is a document received by petitioner from the Church of Scientology of Hawaii or from the Scientology and Dianetics Center for Hawaii, reflecting transactions of petitioner with one or the other of them.

6. During November of 1972, petitioner paid \$200.00 to the Church of Scientology of Hawaii for Auditing, which payment is not reflected on respondent's Exhibits C through Q.

7. The neologisms "Scientology" and "Dianetics" were introduced by L. Ron Hubbard. Mr. Hubbard wrote *Dianetics: The Modern Science of Mental Health*, which was published in 1950 and which sets forth the general principles of Dianetics and Dianetic Auditing as discovered and developed to 1950.

8. Some of the beliefs and practices of Scientology are roughly described in lay terms in *Scientology, A World Religion Emerges in the Space Age*, a book copyrighted by L. Ron Hubbard. Respondent's Exhibit R attached hereto is a true copy of said book. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

9. The Church of Scientology of Hawaii is, and is considered by the Churches of Scientology to be, a church of the kind referred to by Scientologists as a "Class IV Church" or "Class IV Org." The Scientology and Dianetics Center of Hawaii is, and is considered by Churches

of Scientology to be, a church of the kind referred to by Scientologists as a "Mission."

10. There are many churches and missions in the United States and in other countries which practice, teach and promulgate Scientology. As used herein, "Churches of Scientology" refers collectively to such churches and missions, and "Scientologist" refers to members of such churches and missions.

11. The Churches of Scientology, including the Church of Scientology of Hawaii and the Scientology and Dianetics Center of Hawaii, follow common doctrines, practices and beliefs of Scientology.

12. The Churches of Scientology offer Auditing and courses to Scientologists.

13. Auditing, also variously referred to as "processing," "counselling" and "pastorial counselling," is conducted by a specially trained Scientologist, referred to as an "Auditor."

14. Auditing is generally conducted in a private session one to one, between the Auditor and the person being Audited.

15. Every Auditing session is structured and conducted in exact accordance with rituals, codes, doctrines and tenets of Scientology.

16. Scientologists are taught that the individual is an immortal spirit who has a mind and a body. Scientologists are also taught that the highest level of spiritual ability and awareness can be attained only by progressing on a step by step basis through lower and intermediate levels of Auditing.

17. The structure, ritual and content of each Auditing session are determined by the level of attainment of the Scientologist being Audited.

18. Some of the rituals used in Auditing include questions, commands and drills.

19. The Auditor acknowledges the response of the person being Audited, but offers no analysis of the response to the person being Audited.

20. An E-Meter is a device used in Auditing.

21. Auditing is delivered in sessions. An "Intensive" is a specific number of hours of Auditing intended to be given over a short period of time. An intensive is 12½ or 25 hours of Auditing and usually involves 12½ hours of Auditing.

22. An Auditor who conducts a session is expected to know and understand the rituals, codes, tenets and doctrines of Scientology applicable to the conduct of Auditing generally and to have mastered the particular material to be used in the session.

23. No subject matter is taught, studied or learned during an Auditing session (except that the Scientologist being Audited necessarily learns and understands the particular practice used in the session).

24. The Churches of Scientology offer courses to provide training in the doctrines, tenets, codes, policies and practices of Scientology and to train Scientologists as Auditors.

25. Training is delivered to Scientologists under the supervision of a trained Scientologist. Training is delivered in courses each of which includes specific material to be mastered by the students in order to complete the course. Courses range from basic courses which introduce the doctrines and tenets of Scientology through courses which train and qualify Auditors to deliver Auditing at the highest levels.

26. It is a doctrine of Scientology, and Scientologists are taught, that spiritual gains result from the study and understanding of the doctrines, codes and tenets of Scientology, whether or not the student receives Auditing.

27. Scientologists believe that they can attain benefits from Auditing, but only in degrees or steps. These include levels called "Grades" and higher levels called "OT Sections."

28. Respondent's Exhibit S attached hereto is a copy of a document headed "THE BRIDGE" which was published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

29. In contrast to Auditing, Auditor training and other courses furnished by the Churches of Scientology are instructional or educational; the student is expected to understand and learn the material which is the subject matter of the particular course he or she takes. As used herein, "course" means and refers to such services and not to Auditing. Some courses including Auditing by students and Auditing of students.

30. The Churches of Scientology deliver Auditing and training at various levels. A Scientologist who receives Auditing begins at the lowest level and progresses step by step to higher and higher levels. A Scientologist who receives training also begins at the lowest level and progresses step by step to higher and higher levels. Only Auditors who have been qualified by training at an appropriate level can deliver Auditing at that level.

31. Some of the Churches of Scientology also deliver administrator and executive training courses. The students in such courses are taught the management methods and policies of the Churches of Scientology, and are mostly staff members of the Churches of Scientology.

Such courses are occasionally taken by Scientologists who are not staff members. The subject matter of such courses includes Scientology doctrines, tenets and codes which are applicable to the administration and management of Scientology organizations.

32. The Churches of Scientology also deliver a few short courses of a general educational nature, designed to remedy educational deficiencies and to teach Scientology study methods, to enable the student to progress more rapidly in Scientology courses.

33. All of the courses offered by the Churches of Scientology are founded upon the doctrines and tenets of Scientology, in the manner of presenting the material studied and in the instructional methods.

34. The Scientology and Dianetic Center of Hawaii offers Auditing at Grades I through IV.

35. The Church of Scientology of Hawaii offer Auditing from Grade I through Grade IV and Auditor training from Class I through Class IV.

36. The Churches of Scientology have established charges for Auditing and for courses they deliver, and refer to payments of such charges as "fixed donations" or "fixed contributions." Such payments are hereinafter referred to as "fixed donations."

37. Fixed donations are sometimes made for an Intensive 12½ or 25 hours of Auditing.

38. Respondent's Exhibit T attached hereto is a copy of a schedule of fixed donations and book order form, copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

39. Fixed donations constitute the source of most of the funds of the Churches of Scientology. Their only

other source of funds is from sales of Scientology literature, tapes of lectures by L. Ron Hubbard (the founder of Scientology) and artifacts.

40. The payments made by petitioner were fixed donations.

41. The Churches of Scientology do not actively solicit contributions from their members or from the public, other than fixed donations.

42. Petitioner first became a Scientologist in 1971 when she attended activities of the Scientology and Dianetics Center of Hawaii.

43. The Hubbard Qualified Scientologist Course (HQS) is an introductory course, one purpose of which is to familiarize the student with certain basic techniques used in Auditing.

44. Respondent's Exhibit U attached hereto is a copy of a pamphlet copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

45. The Communications Course is an introductory course one purpose of which is to introduce those unfamiliar with Scientology to certain concepts of Scientology.

46. Respondent's Exhibit V attached hereto is a copy of a pamphlet copyrighted by L. Ron Hubbard and published by the Church of Scientology of California. Petitioner objects to said exhibit on grounds of relevance, hearsay and the first amendment.

47. The Communications Course referred to in respondent's Exhibit H was attended by petitioner's daughter, Karen.

48. The Communications Course referred to in respondent's Exhibit I was attended by petitioner's daughter, Laurel.

49. The Hubbard Qualified Scientologist Course referred to in respondent's Exhibit J was attended by petitioner's daughter, Karen.

50. The Hubbard Qualified Scientologist Course referred to in respondent's Exhibit K was attended by petitioner's daughter, Laurel.

51. Respondent's Exhibits W through AQ attached hereto are copies of documents, each of which was published and/or copyrighted as follows:

W Two page flyer, first page headed "Knowledge Services—Books," published by ASHO (Church of Scientology of California) and copyrighted by L. Ron Hubbard.

X Booklet entitled "Scientology & Dianetics," published by Church of Scientology of California.

Y Magazine, the cover of which is missing, published by the Founding Church of Scientology of Washington, D.C. and commencing with an article entitled "The Dangerous Environment."

Z Booklet entitled "Church of Scientology Information, Definitions, Rules," copyrighted by L. Ron Hubbard.

AA Flyer entitled "Gain Respect for Self and Others Through Scientology Training," published by the Los Angeles Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

AB Flyer entitled "Your Road to Total Freedom," published by Church of Scientology of California and copyrighted by L. Ron Hubbard.

AC Flyer commencing with excerpts titled "On Exchange," published by the San Francisco Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.

- AD Flyer entitled "Scientology Auditing gives you a chance to handle your environment better," published by The Church of Scientology Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.
- AE Booklet entitled "Your Road to Clear Goes Through ASHO Foundation," published by Church of Scientology of California and copyrighted by L. Ron Hubbard.
- AF Magazine entitled "Advance," Issue 18, published by the Advanced Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.
- AG Magazine entitled "Advance," Issue 19, published by the Advanced Organization (Church of Scientology of California) and copyright by L. Ron Hubbard.
- AH Magazine entitled "Gateway," Issue 61, published by the Church of Scientology in San Francisco (Church of Scientology of California) and copyright by L. Ron Hubbard and copyright by L. Ron Hubbard.
- AI Magazine entitled "Gateway," Issue 73, published by the Church of Scientology in San Francisco (Church of Scientology of California).
- AJ Magazine entitled "THE AUDITOR: The Monthly Journal of Scientology," Issue 92 Worldwide, published by New American Saint Hill Organization (Church of Scientology of California) and copyright by L. Ron Hubbard and copyright by L. Ron Hubbard.
- AK Magazine entitled "THE AUDITOR: The Monthly Journal of Scientology," Issue 91 Worldwide, published by New American Saint

Hill Organization (Church of Scientology of California). -

AL Magazine entitled "Cause," Issue 26, published by ASHO Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.

AM Magazine entitled "Cause," Issue 26, published by ASHO Foundation (Church of Scientology of California) and copyright by L. Ron Hubbard.

AN Magazine entitled "Clear News," Issue 107, published by AOLA (Advanced Organization, Los Angeles—Church of Scientology of California) and copyright by L. Ron Hubbard.

AO Magazine entitled "Clear News," Issue 104, published by AOLA (Advanced Organization, Los Angeles—Church of Scientology of California) and copyright by L. Ron Hubbard.

AP Magazine entitled "Realty," Major Issue 96, published by Church of Scientology of California and copyright by L. Ron Hubbard.

AQ Magazine entitled "Realty," Issue 102, published by Church of Scientology of California.

Petitioner objects to each of said exhibits on grounds of relevance, hearsay and the first amendment.

52. Respondent has not contested and will not contest, but only for the purposes of this litigation, petitioner's contention that Scientology was at all relevant times a religion.

53. Respondent has not contested and will not contest, but only for the purposes of this litigation, petitioner's contention that each Scientology organization to which petitioner paid money was at all relevant times a church within the meaning of I.R.C. § 170(b)(1)(A)(i), a corporation described in I.R.C. § 170(c)(2) and exempt

from general income taxation under I.R.C. § 501(a) as
an organization described I.R.C. § 501(c) (3).

KENNETH W. GIDEON
Chief Counsel
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Date: 8/20/82

/s/ C. Cobb
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Date: 17 August 82

APPENDIX D

UNITED STATES TAX COURT

Docket No. 7111-79

THOMAS LEE CHRISTIANSEN &
BETTY LORRAINE CHRISTIANSEN,
Petitioner(s),
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STIPULATION

It is hereby stipulated by and between Petitioner(s) and Respondent, by their respective counsel of record, that they will be bound herein by any relevant findings of fact and conclusions of law made by the Court in its opinions and decisions in three certain related "test" cases, namely, Docket Nos. 5837-76, 9384-79, and 374-80, to the extent that such findings of fact and conclusions of law shall have been actually briefed, argued and submitted in such "test" cases, and have been based upon stipulations and/or otherwise undisputed facts therein, excluding, however, findings of fact and conclusions of law relating to any petitioner's subjective intent.

It is understood and agreed that nothing in this stipulation, or in any order based hereon, shall in any way be construed as waiving or changing the venue of any appeal from decision herein, as provided in IRC § 7482(b) (1) (a); and that to the extent relevant the records in said

21a

Docket Nos. 5837-76, 9384-79 and 374-80 shall be deemed part of the record herein for purposes of any such appeal.

Dated:

/s/ Tobias C. Tolzmann
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APPENDIX E

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

Docket No. 7111-79

THOMAS LEE CHRISTIANSEN &
BETTY LORRAINE CHRISTIANSEN,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER AND DECISION

After due consideration of petitioners' Motion for Entry of Final Decision filed December 2, 1985, respondent's Notice of Objection filed December 23, 1985, and petitioners' Response to Notice of Objection filed January 7, 1986, and on the authority of *Graham v. Commissioner*, 83 T.C. 575 (1984), on appeal (9th Cir., Nov. 19, 1984), it is

ORDERED that petitioners' above-referenced Motion for Entry of Final Decision is granted. It is further

ORDERED and DECIDED that there are deficiencies in petitioners' income taxes for the taxable years 1975, 1976, and 1977 in the amounts of \$171.04, \$913.57, and \$306.00, respectively.

/s/ Samuel B. Sterrett
SAMUEL B. STERRETT
Chief Judge

Entered: Mar. 6, 1986

APPENDIX F

UNITED STATES TAX COURT

Docket Nos. 5837-76, 9384-79, 374-80

Filed October 15, 1984

KATHERINE JEAN GRAHAM, *et al.*,¹

v.

Petitioners

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Held: The payments made by petitioners to the various churches of Scientology were not charitable contributions within the meaning of sec. 170(c), I.R.C. 1954. The remittances were made with the exception of receiving a benefit, and such benefit was received. Thus, the transfers were in reality a quid pro quo. *Held, further,* denial of the claimed deductions did not violate any of petitioners' constitutional rights.

Robert N. Harris, Christopher Cobb, and John E. Taussig, for the petitioners.

James M. Kamman and Charles Rumph, for the respondent.

STERRETT, *Judge:* In these consolidated cases, respondent determined deficiencies in petitioners' Federal income taxes as follows:

<i>Docket No.</i>	<i>Petitioner</i>	<i>TYE Dec. 31—</i>	<i>deficiency</i>	<i>Date of Deficiency notice</i>
5837-76	Katherine Jean Graham ²	1972	\$316.24	Apr. 7, 1976
9384-79	Richard M. Hermann	1975	803.00	Apr. 4, 1979
374-80	David Forbes Maynard	1977	643.00	Nov. 14, 1979

¹ Cases of the following petitioners are consolidated herewith: Richard M. Hermann, docket No. 9384-79; David Forbes Maynard, docket No. 374-80.

² Petitioner Graham was unmarried during the tax year in question. Subsequently, she married, and her married name is Mrs. Elliott.

The issues before the Court are: (1) Whether payments made by petitioners to the various churches of Scientology³ were deductible charitable contributions, and (2) whether denial of the claimed deductions would violate petitioners' constitutional rights.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulations of fact, together with the exhibits attached thereto, are incorporated herein by this reference. The parties specifically stipulated to the entire record in *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984). All relevant findings of fact and court rulings from that case will be incorporated into this opinion. Since neither party argued to the contrary, it will be assumed that the Church of Scientology continued to operate at all relevant times in the same manner as it did in *Church of Scientology of California v. Commissioner*, *supra*.

For purposes of this litigation only, respondent did not contest petitioners' contentions that: (1) Scientology was at all relevant times a religion; (2) each Scientology organization to which petitioners paid money was at all relevant times a church within the meaning of section 170(b)(1)(A)(i),⁴ and (3) Scientology was at all relevant times a corporation described in section 170(c)(2) and exempt from general taxation under section 501(a) as an organization described in section 501(c)(3).

Petitioners' residences at the time they filed their respective petitions in this case, and the places they filed

³ For convenience, these various churches of Scientology will be referred to as either the Church of Scientology or the Church.

⁴ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954 as amended and in effect during the taxable years in issue.

their timely income tax returns for their respective years are as follows:

<i>Petitioner</i>	<i>Residence</i>	<i>TYE Dec. 31—</i>	<i>Appropriate office of IRS</i>
Graham	Honolulu, HA	1972	Honolulu, HA
Hermann	Los Angeles, CA	1975	Fresno, CA
Maynard	Rialto, CA	1977	Fresno, CA

Petitioners were at all relevant times Scientologists. Scientology⁵ teaches that the individual is a spiritual being having a mind and a body. Part of the mind, called the "reactive mind" is unconscious. It is filled with mental images that are frequently the source of irrational behavior. Through the administration of a Scientology process known as "auditing," an individual, called a "preclear," is helped to erase his reactive mind and gain spiritual competence. Auditing is also referred to as "processing," "counseling," and "pastoral counseling."

Scientologists believe that they can attain benefits from auditing and training, but only in degrees or steps. These include levels called "Grades" and higher levels called "OT sections." The various steps or degrees of accomplishment are set forth in a chart entitled "Classification Graduation and Awareness Chart of Levels and Certificates."

A trained Scientologist, known as an "auditor," administers the auditing. He is aided by an electronic device called an "E-meter." This device helps the auditor identify the preclear's areas of spiritual difficulty by measuring skin responses during a question and answer session. These auditing sessions are offered in fixed blocks of time called "Intensives."

One of the tenets of Scientology is that, anytime a person receives something, he must pay something back.

⁵ For an indepth review of the Scientology religion and its structure, see *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984).

This is called the doctrine of exchange. The Church of Scientology applies this doctrine by charging a "fixed donation" for training and auditing. With few exceptions, these services are never given for free.⁶ Thus, fixed donations are generally a prerequisite to a person's receiving auditing and training. These fixed donation payments constitute the majority of the Church of Scientology's funds, and are used to pay the costs of church operations and activities.

The general rates of the fixed donations for auditing in 1972 were as follows:

12½-Hour intensive	\$ 625
25-Hour intensive	1,250
50-Hour intensive	2,350
75-Hour intensive	3,350
100-Hour intensive	4,250

In addition, the Church of Scientology offered two specialized types of auditing for a higher fixed donation—

Integrity Processing	\$750 per 12½-Hour intensive
Expanded Dianetics	\$950 per 12½-Hour intensive

⁶ The Church of Scientology has a nine-volume encyclopedia of Scientology policy called the OEC series. Hubbard Communications Office Policy Letter (HCO PL) Sept. 27, 1970 (Issue I), 3 OEC 89, describes the Church of Scientology's policy against free services and price cutting. It states:

Price cuts are forbidden under any guise.

1. PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG. Processing is too expensive to deliver.

* * * *

9. ONLY FULLY CONTRACTED STAFF IS AWARDED FREE SERVICE, AND THIS IS DONE BY INVOICE AND LEGAL NOTE WHICH BECOMES DUE AND PAYABLE IF THE CONTRACT IS BROKEN. [Emphasis added.]

⁷ Historically, the price of a 25-hour intensive was fixed at an amount equal to 3 months of pay for the average middle-class worker in the district of the Scientology Church providing the service.

Members of the Church of Scientology are encouraged to make advance payments for Scientology courses. If payment is made well in advance of the services to be rendered, a discount of 5 percent can be obtained by the member. When a parishioner makes an advance payment, the Church credits his account. Once the individual begins receiving a service, his account is debited. It is the Church of Scientology's policy to refund advance payments upon request at any time before services are received.⁸

The Church of Scientology operates in a commercial manner in providing these religious services. In fact, one of its articulated goals is to make money. This is expressed in HCO PL March 9, 1972, MS OEC 381, 384. It sets out the governing policy of the Church of Scientology's financial offices by exhorting these offices to "MAKE MONEY. * * * MAKE MONEY. * * * MAKE MORE MONEY. * * * MAKE OTHER PEOPLE PRODUCE SO AS TO MAKE MONEY." The goal of making money permeates virtually all of the Church of Scientology's activities—its services, its pricing policies, its dissemination practices, and its management decisions.

The Church of Scientology promotes its services through free lectures, congresses, free personality tests, and handouts. Advertisements are placed in newspapers, magazines, and on the radio. These promotional activities are geared to be responsive to community concerns, which are determined from surveys.

In 1972, Graham made payments totaling \$1,682 to the Church of Scientology, Hawaii, and to the Scientology and Dianetic Center of Hawaii. Of this amount, approximately \$400 went towards training, the balance went for auditing. These payments were for the Hub-

⁸ No evidence was produced with respect to the actual amounts, if any, of such refunds during the tax years in issue.

bard Qualified Scientologist course (HQS), Communications course, and auditing. Some of the payments toward courses were for Graham's daughters, Karen and Laurel. When Graham made those payments, she expected to receive and did receive, the benefit of those services. On her 1972 income tax return, Graham deducted \$1,682 as a charitable contribution.

In 1975, Hermann paid the Church of Scientology, American Saint Hill Organization (ASHO) \$4,875. At the time Hermann made these transfers, he expected to receive Class 0 to 9 training. While Hermann did not take these courses, he did take other Scientology courses and has received auditing between 1974 and the present. On his 1975 income tax return, Hermann deducted \$3,922 as a charitable contribution.

In 1977, Maynard paid the Church of Scientology, Mission of Riveride, \$4,698.91 as advance payments for services. While Maynard did not receive any services in 1977, he made those remittances with the expectation of taking Interiorization Processing, Expanded Dianetics, and auditing. On his 1977 income tax return, Maynard claimed a \$5,000⁹ charitable contribution deduction.

In the respective notices of deficiency, respondent disallowed these claimed charitable contribution deductions. Respondent maintains that it was not established that the payments to the Church of Scientology were contributions or gifts rather than payments for services or merchandise.

Issue 1. Deductibility of Payments Made

The taxpayer has the burden of proving that a particular payment is a "contribution or gift." *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934); *Welsh v. Helvering*, 290 U.S. 111 (1933); Rule 142(a), Tax

⁹ This amount consisted of a \$2,385 carryover from 1976 transfers and \$2,615 for transfers in 1977.

Court Rules of Practice and Procedure. Petitioners argue that their remittances to the Church of Scientology met the statutory requirements of section 170, subsections (a) and (c), and thus were deductible charitable contributions. Respondent maintains that those payments were not "contribution[s] or gift[s]" within the meaning of section 170(c). Rather, he insists they were made to purchase services, i.e., a quid pro quo, and thus were nondeductible personal expenditures.

Section 170(a)(1) allows as a deduction any charitable contribution payment which is made within the taxable year. Section 170(c) defines the term "charitable contribution" as "a contribution or gift." Neither section 170 nor the regulations further elaborate on the meaning of "charitable" contribution." This issue was addressed, however, in *DeJong v. Commissioner*, 36 T.C. 896 (1961), aff'd. 309 F.2d 373 (9th Cir. 1962). There, the Court stated—

As used in this section the term "charitable contribution" is synonymous with the word "gift." * * * A gift is generally defined as a *voluntary transfer* of property by the owner to another *without consideration* therefor. If a payment proceeds primarily from the incentive of anticipated benefit of the payor beyond the satisfaction which flows from the performance of a generous act, it is not a gift. * * * [*DeJong v. Commissioner, supra* at 899. Citations omitted; emphasis added.]

Petitioners wanted to receive the benefit of various religious services provided by the Church of Scientology. The Church of Scientology, however, generally provided those services only if they were purchased.* To encourage such purchases, the Church of Scientology gave a 5-percent discount to parishioners who made advance payments. A person who made an advance payment but chose not to receive the services could request a refund of

his money. Petitioners thus made payments to the Church in exchange for those services.

The record demonstrates clearly that these payments were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return. In addition, where contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo. *Haak v. United States*, 451 F. Supp. 1087, 1090-1091 (W.D. Mich. 1978).

Petitioners Graham and Hermann made payments for which they received religious services. They received a perceived benefit from their transfers. Petitioner Maynard made advance payments to the Church of Scientology. While he did not receive any religious services in 1977, his account was credited for his remittances. This credit entitled him to receipt of services in the future. It was that entitlement which constituted his receipt of a perceived benefit, or the quid pro quo.

Accordingly, none of the payments petitioners made were charitable contributions within the meaning of section 170(c). Instead, they were nondeductible personal expenditures.

Issue 2. Constitutional Arguments

Petitioners maintain that denial of the deduction interferes with their constitutional right to the free exercise of their religion. It is well established that there is no constitutional right to a tax deduction. Benefits granted to taxpayers, such as deductions for charitable contributions, are matters of legislative grace. *Interstate Transit Lines v. Commissioner*, 319 U.S. 590, 593 (1943); *New Colonial Ice Co. v. Hervering*, *supra* at 440; *Winters v. Commissioner*, 468 F.2d 778, 781 (2d Cir. 1972), *affg.* a Memorandum Opinion of this Court. Further, denial of this deduction does not violate the free

exercise clause of the First Amendment. *Parker v. Commissioner*, 365 F.2d 792, 795 (8th Cir. 1966), cert. denied 385 U.S. 1026 (1967); *Winters v. Commissioner*, *supra* at 781. The constitutionality of the denial of this deduction was well stated by the Supreme Court in *Cammarano v. United States*, 358 U.S. 498, 513 (1959)—

Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code. * * *

Respondent is not precluding petitioners from engaging in constitutionally protected activities. Petitioners may practice their beliefs; they just will not be subsidized for them.

Even if denial of the deduction interfered with petitioners' practice of their religious beliefs, not all burdens on religion are unconstitutional. *United States v. Lee*, 455 U.S. 252, 257 (1982). See also, e.g., *Prince v. Massachusetts*, 321 U.S. 158, 163-166 (1944); *Reynolds v. United States*, 98 U.S. 145, 166-167 (1878). The limitation on religious liberty can be justified by showing that it is essential to accomplish an overriding governmental interest. *United States v. Lee*, *supra* at 257-258. The Supreme Court has stated that "Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *United States v. Lee*, *supra* at 260.

Petitioners also argue that denial of the deductions violates the establishment clause of the First Amendment.¹⁰ Their argument is twofold. First, disallowance

¹⁰ Petitioners raised similar establishment clause arguments in *Church of Scientology of California v. Commissioner*, 83 T.C. at

would result in disparate treatment of petitioners, in violation of the neutrality requirement of the First Amendment. Second, disallowance would be the result of excessive Government entanglement with religion, in violation of the First Amendment.

Petitioners place heavy emphasis on *Larson v. Valente*, 456 U.S. 228 (1982). In that case, Minnesota had enacted a statute imposing registration and reporting requirements on religious groups which solicited more than 50 percent of their contributions from nonmembers. The Supreme Court held that the statute violated the establishment clause of the First Amendment. In so doing, they rejected an argument that the statute was facially neutral and found instead that it made "explicit and deliberate distinctions between different religious organizations." *Larson v. Valente*, *supra* at 247 n. 23. The Court further mentioned that "The fifty percent rule of section 309.515, subd. 1(b), effects the *selective* legislative imposition of burdens and advantages upon particular denominations." *Larson v. Valente*, *supra* at 253-254.

The instant case is distinguishable from *Larson* because section 170, unlike the charitable solicitation law in *Larson*, does not make classifications among religions. Furthermore, unlike *Larson*, here there is no legislative history revealing overt discrimination. Finally, even if section 170 has the effect of advancing one religion more than another, that fact alone does not make the statute unconstitutional. The establishment clause does not prohibit a statute from having a disparate impact on religious organizations provided the disparate impact results from the application of secular criteria. *Lynch v. Donnelly*, 465 U.S. —, — (1984); *Gillette v. United*

447-454. While that case dealt with the constitutionality of sec. 501(c)(3), its rationale is fully applicable to sec. 170 and we incorporate herein by this reference that portion of the opinion.

States, 401 U.S. 437, 452 (1971); *McGowan v. Maryland*, 366 U.S. 420, 442-444 (1961). Here the tests for determining the deductibility of claimed charitable contributions are based on secular criteria. Further, *Larson* is distinguishable from the case at bar because the section 170 classification bears equally upon all religious organizations. Thus, there is not the political divisiveness here that was prevalent in *Larson*. Accordingly, the argument of unconstitutionality under the establishment clause is rejected.

Finally, petitioners insist that denial of the claimed deductions was due to selective discriminatory action. They claim that their rights under the First Amendment and the equal protection component of the due process clause of the Fifth Amendment were violated. The evidence in this case does not demonstrate that any discriminatory action was taken against petitioners by respondent or any of his agents. Petitioners have failed to prove that violation of their rights occurred under either the First or Fifth Amendment.¹¹

Decisions will be entered for the respondent.

¹¹ This issue of selective enforcement was also raised and rejected in *Church of Scientology of California v. Commissioner*, 83 T.C. at 453-454.

APPENDIX G

A.R.M. 2, 1 C.B. 150 (1919)

Section 214 (a) 11, Article 251: Charitable contributions.

The Committee is of the opinion that the distinction of pew rents, assessments, church dues, and the like from basket collections is hardly warranted by the act. The act reads "contributions" and "gifts." It is felt that all of these come within the two terms.

In substance it is believed that there are simply methods of contributing, although in form they may vary. Is a basket collection given involuntarily to be distinguished from an envelope system, the latter being regarded as "dues"? From a technical angle, the pew rents may be differentiated, but in practice the so-called "personal accommodation" they may afford is conjectural. It is believed that the real intent is to contribute and not to hire a seat or a new for personal accommodation. In fact, basket contributors sometimes receive the same accommodation informally. On these grounds, the Committee is of the opinion that ordinarily and customarily pew rents, as well as so-called assessments and so-called dues, are to be regarded as contributions.

It is accordingly recommended that this interpretation be adopted.

APPENDIX H

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof

Internal Revenue Code of 1954 (26 U.S.C.)

§ 170—Charitable, etc., Contributions and Gifts *

(a) Allowance of deduction.

(1) General rule. There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. * * *

(b) Percentage limitations.

(1) Individuals.—In the case of an individual, the deduction in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule. Any charitable contribution to—

(i) a church or a convention or association of churches.

* * * *

* Only those portions of 26 U.S.C. § 170 and 26 U.S.C. § 501 relevant to the discussion in this petition are set forth here. References to Title 26 United States Code are to the Internal Revenue Code of 1954, which was in effect when the tax returns at issue in this case and related cases were filed and when the Commissioner's notices of deficiency were issued. As part of the Tax Reform Act of 1986, the 1954 Code was redesignated the Internal Revenue Code of 1986. Pub. L. 99-514 § 2(a), 100 Stat. 2085, 2095. The portions of sections 170 and 501 of the 1954 Code pertinent to this case were not changed by the Tax Reform Act of 1986 and remain in force in identical form.

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(c) Charitable contribution defined. For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of:

* * * *

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

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